The Trump Administration has released three Executive Orders ("EO") targeting federal sector labor-management relations within the next week. Below are summaries of the three orders as it relates to collective bargaining, official time, and accountability.

I. **Collective Bargaining**

The collective bargaining EO is entitled "Developing Efficient, Effective, and Cost-Reducing Approaches to Federal Sector Collective Bargaining."

The EO creates a working group ("the Group") overseeing Labor Relations.

- It will be chaired by the OPM Director or his designee and consist of the Labor Relations heads from every agency with at least 1,000 bargaining unit employees.
    - Agencies with less than 1,000 bargaining unit employees can participate if their agency head and the OPM Director agree.
- The Group is responsible for creating a bank of CBA provisions, proposals, and counterproposals.
- The Group will take the information collected and develop "best practices" for negotiations, to include: developing model ground rules, analyzing the impact of CBA provisions on agency effectiveness and efficiency.

The EO prescribes time limits for term and midterm negotiations.

- At the outset, the EO states that contract renegotiations should take no more than one year.
- Further into the EO, it states that 4–6 months is sufficient time for term negotiations.
- Ground rule negotiations should take *6 weeks or less* of that 4–6 month time frame.
- Request assistance from the Federal Mediation and Conciliation Service ("FMCS") to mediate disputed issues
    - Any issues not resolved within the reasonable time period must be sent to the Federal Service Impasse Panel ("FSIP" or the "Panel") for resolution

The EO describes actions agencies should take if at any time during the negotiations process, the agency believes that the union is not negotiating in good faith.

- The agency should evaluate filing a ULP against the union.
    - Some of the conduct outlined in the EO that would be considered bad faith negotiating by the union are subjective.
- Even if the agency files a ULP against the union, the agency is to continue attempting to negotiate in good faith or seek Panel assistance while the ULP is pending.
- If the agency elects not to file a ULP against the union, the agency can propose a new contract, memorandum, or other change in agency policy AND implement that proposal if the union does not offer a counterproposal in a timely manner.

Bargaining over permissive subjects is prohibited.

- Including the subjects listed in 5 U.S.C. §7106(b)(1)

The EO mandates how the grounds rules proposal process will occur.

- The agency bargaining team will request the exchange of written proposals while developing the proposed ground rules.
    - This will be done to facilitate resolution of negotiability issues and to assess the likely effect of specific proposals on agency operations and management rights.
- If an agency's CBA, ground rules, or other agreements contain requirements for a bargaining approach OTHER THAN the exchange of written proposals addressing specific issues, *at the soonest opportunity*, the agency should take steps to eliminate them.

The EO mandates public accessibility of all agency CBAs.

- All agencies will be required to submit their CBAs to OPM and OPM will make them publicly accessible on the Internet.
- Agencies will also be required to submit a report of their current CBAs with expiration dates to OPM.
- They must also submit new CBAs and their expiration dates within 30 days of the effective date.
- Arbitration awards must also be submitted within 10 business days of receipt. It is unclear from the EO whether arbitration awards will be made public in the same manner as the CBAs.

II. **Official Time**

This Executive Order ("EO") as the name suggests, covers the use of "Taxpayer-Funded Union Time", otherwise known as official time.

The EO sets a presumption that official time should not exceed a rate of one (1) hour per bargaining unit employee.

- The EO states that agreements that provide for official time in excess of a rate of one (1) hour per bargaining unit employee should ordinarily not be considered "reasonable, necessary, and in the public interest."
- Agencies shall commit the time and resources necessary to achieve a negotiated outcome of keeping official time below the 1 hour/per bargaining unit employee threshold.
- If an agency agrees to exceed this threshold, the agency head must report the fact to OPM and explain why the expenditures are reasonable, necessary, in the public interest, the direct benefit the public will receive from the use of time.
    - This provision does not apply to official time granted by the FSIP or ordered by an arbitrator in an interest arbitration, so long as the agency did not propose an amount that exceeds the threshold to the arbitrator or FSIP.

The EO prohibits Federal employees from engaging in lobbying activities during paid time, unless in the performance of their official duties.

The EO states that Federal employees should spend at least three-quarters (75%) of their paid time in each year performing agency business. An employee should not spend more than one-quarter (25%) of their time on official time.

- An employee may spend more than one-quarter (25%) of their time on official time if they are authorized to do so for purposes covered by 5 U.S.C. § 7131(a) and § 7131(c).
- If any employee exceeds one-quarter of their time on official time, the excess hours will count against their one-quarter time allotment for the following year.

The EO states that no employees, when acting on behalf of a Federal labor organization, may be permitted the free or discount use of government property or other agency resources if such free or discounted use is not generally available for non-agency business by employees when acting on behalf of a non-federal organization.

- This includes the use of office or meeting space, reserved parking spaces, phones, computers, and computer systems, among other resources.

The EO prohibits the reimbursement of Federal employee expenses incurred performing non-agency business, unless required by law or regulation.

The EO prohibits federal employees from using paid time to prepare or pursue grievances against an agency under procedures negotiated pursuant to 5 U.S.C. §7121, unless required by law or regulation. The prohibition does not apply to:

- An employee using official time to prepare for, confer with an exclusive representative regarding, or present a grievance brought on the employee's own behalf;
- An employee appearing as a witness in any grievance proceeding;
- An employee using official time to challenge an adverse personnel action taken against the employees in retaliation for engaging in federally protected whistleblower activity, include activity protected under 5 U.S.C. § 2302(b)(8), 15 U.S.C. § 78u-6(h)(1), 31 U.S.C. 3730(h), or any similar whistleblower law.

The EO places new rules on the use of official time.

- Employees may not use official time without advance written authorization, except in exigent circumstances where prior approval is impracticable or guidance in line with what OPM issues as a result of the EO.

The EO states that any Federal employee using official time without advance written agency authorization or for purposes not specifically authorized by the agency shall be considered AWOL and subject to disciplinary action.

- Repeated and willful misuse of official time may constitute serious misconduct that impairs the efficiency of the Federal service. Employees shall be subject to appropriate disciplinary actions to address the misconduct.

Employees may use unpaid leave to perform union business.

Each agency must issue a new policy governing the use of official time within 180 days. Each policy must:

- The policy must require that the employee requesting official time specify the amount of official time to be used for union business and the specific purpose the time will be used and include sufficient detail to identify the tasks the employee will undertake.
- Agencies may not grant official time under 5 U.S.C. §§ 7131(a) and 7131(c) if the purposes of the official time is not covered by those sections or properly falls under 5 U.S.C. § 7131(d).
- If requests are continuing or ongoing, the individual using official time must request an authorization renewal at least once per pay period.

- Agencies must require that employees seek separate authorization for any official time usage in excess of previously authorized hours or if the official time will be used for different purposes than previously authorized.

The EO provides specific guidance as to its implementation.

- The EO must be implemented by agencies within 45 days of its issuance, except for the provisions of certain subsections requiring additional action by OPM, to the extent permitted by law and consistent with their obligation under CBAs in force as of the date of the EO.
- An agency with a CBA that is inconsistent with the EO should give notice of its intention to alter the terms of the CBA and reopen negotiations on the earliest date permitted by law.
    - Any subsequent negotiations should terminate any provisions inconsistent with the CBA and implement the EO's requirements.
    - Nothing in the EO will abrogate any agreements in effect on the date of the EO's issuance.
- Agencies should consult with employee labor representatives on the implementation of the EO.

III. **Executive Order on Accountability and Streamlining Removal Procedures Consistent with Merit Principles**

This EO is entitled "Promoting Accountability and Streamlining Removal Procedures Consistent with Merit Principles."

The EO mandates that poor performers will be dealt with quickly in a straightforward process that "limits the burden on supervisors."

- Opportunity periods will be limited to "the amount of time that provides sufficient opportunity to demonstrate acceptable performance"
    - The amount of time is not defined.

The EO states that management is no longer required to use progressive discipline.

- The penalty for misconduct shall be tailored to the facts and circumstances of the incident.
- Agencies can look at ALL past misconduct when proposing discipline, not just similar misconduct

Management no longer needs to look at comparators when proposing and imposing discipline.

- Discipline should be "calibrated" to each situation
    - Conduct that justified discipline for one employee does not justify similar discipline for a different employee at a different time
    - Agencies are not prohibited from removing an employee solely because they did not remove a different employee for similar misconduct
    - If a removal is appropriate, management is no longer required to contemplate a suspension instead.

Decisions on proposed removals must be issued with 15 business days of the employee's response to the notice of proposed removal

Written notice of adverse actions is limited to 30 days

This EO states that removals for performance issues in certain instances should be handled under Chapter 75 instead of Chapter 43

For probationary employees, the probationary period should be used as the final step in the hiring process of a new employee.

- Supervisors should use that period to assess how well an employee can perform the duties of the job

If there is a need for a reduction in force ("RIF"), performance will be prioritized over length of service.

The EO states that "whenever reasonable in view of particular circumstances," agency heads shall seek to exclude from negotiated grievance procedures any dispute concerning decision to remove an employee for misconduct or unacceptable performance.

- Agencies should commit the time and resources needed to achieve this goal and to fulfill its obligation to bargain in good faith.
- If an agreement cannot be reached, the agency should promptly request the intervention of FMCS and, as necessary, FSIP.

The EO prohibits agencies from allowing a grievance procedure or binding arbitration to resolve disputes concerning:

- The assignment of ratings of record; or
- The award of any form of incentive pay, including cash awards, quality step increases; or recruitment, retention, or relocation payments.

This EO prohibits an agency from agreeing to erase, remove, alter, or withhold from another agency any information about a civilian employee's performance or conduct in that employee's personnel file, including the Official Personnel Folder and the Employee Performance File as part of, or a condition to, resolving any complaint by the employee or as part of an administrative challenge to an adverse personnel action.

Each agency head is instructed to revise the agency's disciplinary and unacceptable performance policies to conform with the EO within 45 days. Agencies should seek to renegotiate any CBA provisions that are inconsistent with the EO at the earliest possible date.

Nothing in the EO shall abrogate any CBA in effect on the date of the Order.

Agencies should consult with employee labor representatives about the implementation of the EO.